

Insights: Alerts

Copyright Infringement & the Statute of Limitations Clock: Did the Supreme Court Prematurely Spring Forward on Damages?

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By removing any limitation on the temporal scope of damages recovery, the U.S. Supreme Court's decision yesterday in *Warner Chappell Music Inc. v. Nealy* opened the door to copyright infringement claims dating further back in time. The Court held that a copyright owner is entitled to obtain monetary relief for any timely infringement claim, regardless of when the infringement occurred. Yet, the Court skirted the more fundamental question—when does the statute of limitations clock start ticking?

The Copyright Act's three-year statute of limitations has prompted divergent theories for when an infringement claim accrues and the scope of permissible monetary relief. Under the “injury rule” of accrual, a copyright infringement claim is viable if it is brought within three years of the infringement occurring. Conversely, the “discovery rule” triggers the statute only when the plaintiff discovers, or should have discovered, the infringing act, even if that act occurs many years before the lawsuit is filed. For procedural reasons, the Court applied the discovery rule in this case.

The Court declined to establish a uniform rule to determine the timeliness of a claim, and instead reviewed the temporal scope of permissible relief. Some courts that adopted the discovery rule have interpreted the Copyright Act's statute of limitations to cut off damages for any infringement that preceded that lawsuit by more than three years. In this case, the Court rejected this three-year bar on monetary relief. Under the discovery rule, a plaintiff can seek recovery of damages for infringing acts that happened at any time in the past, as long as the discovery of the alleged infringement occurred within the last three years.

Justice Gorsuch's dissent underscores the unresolved nature of the majority's ruling. He criticized the majority for “sidestep[ing] the logically antecedent question whether the [Copyright Act] . . . tolerate[s] a discovery rule,” suggesting that it does not. He would have dismissed the petition as improvidently granted and urged the Court to consider a case that squarely presents the issue of accrual before ruling on the scope of recovery.

This is likely not the last word on how the copyright statute of limitations operates. Indeed, a petition for certiorari is pending before the Court in *Hearst Newspapers LLC v. Martinelli*, Case No. 23-474, which presents the exact question Justice Gorsuch would have preferred the Court to consider: whether the Copyright Act

authorizes the discovery rule at all. The *Hearst* case would give the Court an opportunity to provide much-needed guidance and uniformity in the interpretation of the copyright statute of limitations.

Kilpatrick will closely monitor further developments related to the accrual of claims and damages recovery in copyright infringement cases. We invite you to contact any member of our Copyright Team to discuss how this decision may apply to your specific situation.

The case is *Warner Chappell Music Inc. v. Nealy*, 601 U. S. ____ (2024).

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